IN THE

SUPREME COURT OF THE UNITED STATES

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SUPREME COURT, U.S.

No. 74-1529

ROBERT HENDERSON, Superintendent of Auburn Correctional Facility, Auburn, New York,

Petitioner,

against

UNITED STATES OF AMERICA ex rel. TIMOTHY MORGAN,

Respondent.

BRIEF IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

QUESTION PRESENTED

Should certiorari be granted for the purpose of reviewing a factual determination supported by evidence in the record that the accused did not know the elements of the crime to which he was pleading and that consequently his plea was not in accordance with due process of law.

REASONS WHY CERTIORARI SHOULD BE DENIED

THE APPLICATION SHOULD BE DENIED BECAUSE THE DISTRICT COURT'S DECISION OF THE FACTS IS SUPPORTED BY EVIDENCE IN THE RECORD AND THE DISTRICT COURT CORRECTLY APPLIED THE EXISTING LAW TO THE FACTUAL DETERMINATION TO HOLD THAT THE RESPONDENT'S PLEA WAS NOT IN ACCORDANCE WITH THE DUE PROCESS PROVISIONS OF THE CONSTITUTION.

The petitioner contends that the District Court adopted, and the Second Circuit affirmed, a new principle of law to determine whether a plea of guilty satisfied the requirements of due process. It is respectfully submitted that the petitioner is simply wrong.

The District Court's memorandum decision sets forth the principle of law that is to be applied in determining whether a guilty plea is valid or not. That principle is simply whether under all of the circumstances surrounding it the respondent's plea was made voluntarily after proper advice and with a full understanding of the consequences. This is not a new or novel principle of law and even the petitioner recognizes it as the correct principle to be applied in determining issues of this nature.

What the petitioner contends apparently is that even though the Court enunciated the correct principle it didn't apply it. In other words, according to the petitioner, the Court did not look at the surrounding circumstances and if it had done so they as a matter of law would point inescapably to the conclusion that the plea was an intelligent plea and therefore valid.

At the outset it should be pointed out that there is nothing in the opinion and no reason to believe that the Court failed to consider the surrounding circumstances.

Secondly, it seems obvious that the surrounding circumstances mentioned in the petitioner's brief are not particularly helpful in determining the issue in this case. Among the circumstances which the petitioner contends "point inescapably" to the conclusion that the plea was voluntary are the following:

1. The respondent admitted the act charged. The issue is whether he knew the significance of such an admission and in the light of the testimony by both the respondent and the two defense counsel the District Court found that he did not know the significance because he did not know the nature of the crime to which he was pleading guilty.

2. The respondent never claimed that he was prejudiced and that he may have had a credible defense to a homicide charge alleging intent. This again is the crux of the matter since the Court found that the respondent never knew that he had a possible defense and it is for this very reason, among others, that the Court found his plea to be invalid.

3. The respondent was represented by competent counsel. The problem from the petitioner's standpoint in connection with this circumstance is that one of the counsel admitted he never told the respondent the nature of the crime to which he was pleading and the second counsel thought but could not be sure that he may have told him that intent was an element of that crime. On the basis of this testimony, the District Court decided as a matter of fact that the respondent did not know the true nature of the crime to which he was pleading.

4. The respondent's psychiatric examination held him fit to go to trial. This circumstance is completely irrelevant to the issue since the respondent in his application for certiorari did not contend that he didn't have the intelligence to understand but was not given the knowledge upon which to make an intelligent decision of whether he should or should not plead guilty to murder in the second degree.

5. The respondent waited five years before attacking his plea. In this connection, the evidentiary hearing showed that the respondent first learned of the possible defects in his plea shortly before he brought his writ.

6. That the record indicated no surprise or disappointment at the time of sentence. Here again, this is really of no significance on the question of whether the respondent knew that intent was an element of the crime to which he was pleading.

7. The factual basis for the plea is plain on the record. Apparently the argument is here that intent could be found from the multiplicity of stab wounds in the deceased's body. But the issue that the District Court had to resolve was not whether the respondent intended to cause the death of the deceased, but whether the respondent knew that the State had to prove that he intended to cause the death of the deceased. The number of stab wounds might have been helpful on the proof of the former but was irrelevant on the latter issue.

It seems clear, therefore, that while the Court did not overlook any of the surrounding circumstances, that those circumstances really were not particularly helpful in determining the issue which the Court had to resolve. The significant proof on that issue obviously came from the respondent who denied that he knew that intent was an element of the crime and from the two defense counsel, one of whom admitted that he had not told him and the other one who testified that he couldn't be sure but thought that he might have.

On the basis of this testimony, the District Court found as a matter of fact that the respondent did not know the essential nature of the crime to which he was pleading and that consequently his plea was not in accordance with the due process provisions of the United States Constitution.

The question of fact obviously falls within the province of the trier of the fact and if the decision is supported by evidence in the record, as this decision clearly is, it should not be disturbed by an Appellate Court, even the most august Appellate Court.

The petitioner's argument that the District Court's decision in this case imposes a ritualistic and mechanistic procedure upon the sentencing Court and/or defense counsel is simply not the case. What the District Court has done is simply to determine whether under all of the circumstances the plea was a valid plea. When it resolved this factual issue in favor of the respondent it set the plea aside and required the respondent to be given an opportunity to replead to the crime. The decision does not mean, as contended by the petitioner, that the record must show for a plea of guilty to be valid that the accused must be given a hornbook knowledge of the crime to which he is pleading and if that is not shown on the record his plea is invalid. What the decision says is what has traditionally been the law of this country. If a plea to a crime is to be valid, it must be intelligent and to be intelligent the accused must know the essential nature of the crime to which he is pleading.

The petitioner's brief recognizes that guilty pleas have been set aside that do not meet this criteria. United States v. Thomas, 468 F. 2d 422 (10th Cir. 1972), cert. denied 410 U.S. 935. But, says the petitioner, this has only been done in complex cases.

Whether the crime of murder in the second degree is more or less complex than the crime of conspiracy would depend on the circumstances surrounding each crime.

Furthermore, it is not the complexity of the crime which determines whether the plea should be set aside as invalid, but whether the accused knew the nature of it when he pleaded guilty to it.

It is respectfully submitted that the District Court's decision on the facts is supported by the record and it applied to the facts found by it the correct rule of law - to reach a decision which should not be reviewed by this Court.

CONCLUSION

PETITIONER'S APPLICATION FOR CERTIORARI SHOULD BE DENIED.

Dated: Auburn, New York, June 19th, 1975.

Respectfully submitted,

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